

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Telephone Number Portability

CC Docket No. 95-116

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Comments of Bell Atlantic

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Section 251(e)(2) of the 1996 Act establishes a simple, straightforward rule for the recovery of the costs of providing number portability. It provides, "The costs of establishing . . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." This is an easy rule to follow. The only costs that are recoverable pursuant to this paragraph are the costs of number portability, not other costs, such as those for general upgrades to carriers' networks. All telecommunications carriers must bear these costs, not just the incumbent local exchange carriers which will have to make the bulk of the investment to make number portability a reality. Finally, it is clear that incumbent exchange carriers may not bear a disproportionate share of these costs, because it would not be "competitively neutral" if they did.

The cost recovery plan suggested in the Notice¹ is unnecessarily complicated, establishing different recovery methods for different categories of costs. Instead, Bell Atlantic proposes that the costs of long-term number portability be recovered in a manner similar to that the Commission established to recover the costs of telecommunications relay services ("TRS").

¹ *In the Matter of Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, FCC 96-286 (rel. July 2, 1996) ("Notice").

By: [Signature] 0416

This would involve establishing an administration function, perhaps under the oversight of the North American Numbering Council. All local exchange carriers would report their number portability costs to the Administrator, in accordance with to the Commission's definition of recoverable costs. The Administrator would allocate these costs among the carriers in proportion to their revenues from telecommunications services, determine each carrier's proportionate share, "bill" each carrier and remit receipts to the local exchange carriers providing number portability. In order to ensure that the marketplace effect is competitively neutral, the Commission should require every carrier to pass its share of these costs on to its customers.

The costs to be recovered. Bell Atlantic agrees with the Commission's tentative conclusions that there are three types of costs involved in the provision of number portability² and that the cost recovery provisions of section 251 do not apply to the third category, general network upgrades such as IN, AIN and SS7.³

The regulations adopted under section 251(e)(2) should establish a mechanism for recovering the number portability costs that are incurred to meet the requirements of section 251 of the Act. Section 251(b)(2) imposes on all local exchange carriers — incumbent and new entrant alike — the duty to provide number portability. Therefore, the Commission's rules should permit all local exchange carriers to recover these costs.

² Notice ¶ 208. The first category, shared costs, includes database administration and service management systems. The second, individual carrier costs, includes costs for switch generic upgrade (hardware, software, memory), number portability feature software, SS7 augmentation (*e.g.*, links, ports, capacity), billing, provisioning and operations support system upgrades, advancement of new technology, trunking additions, and local service management systems.

³ Notice ¶ 226-27.

Other carriers (or even non-carriers) might choose to spend money in connection with the deployment of number portability. Because they have no statutory duty to do so, and no obligation under the Commission's rules, these carriers may not take advantage of the cost recovery provisions of section 251.

The cost recovery mechanism. The Notice contemplates that there would be different recovery methods for the two types of costs covered by section 251(e)(2), the carrier-specific costs and the costs of shared facilities, and even different recovery methods for different types of shared facility costs.⁴ It also contemplates that there would be separate cost recovery systems in every State. Bell Atlantic believes that such distinctions are unnecessary, would needlessly complicate matters for all concerned and would serve no public good.

The Commission's primary goal should be to devise a simple, easy to administer, low overhead system for ensuring that the appropriate costs are recovered from all telecommunications carriers. This system should also be one that imposes as little as possible on the resources of the Commission or State regulatory agencies and requires minimal regulatory oversight. The multiple interrelated recovery mechanisms suggested in the Notice do not meet these goals.

Rather, the Commission should create a national cost recovery administration function similar to the one that exists today for TRS costs, perhaps under the auspices of the North American Numbering Council. The NANC could select an Administrator through a competitive bidding process. Because the Administrator's role would be essentially that of

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Notice ¶¶ 212-25.

bookkeeper with no particular telecommunications expertise required, there should be no scarcity of qualified bidders.

This Administrator would collect number portability cost information from all local exchange carriers pursuant to regulations established by the Commission (information about both carrier-specific and shared facility costs) and aggregate all these costs nationwide. It would also collect whatever information the Commission prescribes as the basis for cost allocation, and, again pursuant to Commission rules, allocate these costs among the contributing carriers. It would then bill these carriers for their share and remit the money to the carriers incurring the costs.

Bell Atlantic would expect that the Commission's rules would be clear as to what costs were subject to recovery and that there would be no reason for there to be any disputes over whether some carrier was seeking recovery of other costs. However, the rules could also establish an expedited complaint process for any carrier wanting to challenge the costs submitted by a local exchange carrier.

The carriers which contribute. The statute could not be more clear that all telecommunications carriers must bear these costs. The Commission is correct that this term includes "incumbent LECs, new LECs, CMRS providers, and IXC."5

The basis for the allocation. The Commission has the right idea when it suggests that number portability costs should be allocated among carriers in proportion to their telecommunications service revenues. The Commission used gross revenues as the basis for

⁵ Notice ¶ 130.

dividing up the costs of telecommunications relay services.⁶ In the years that this system has been in operation, there has been no suggestion that this cost recovery method is competitively biased or otherwise unsatisfactory.

An even a better allocator than gross telecommunications revenues, however, would be gross retail telecommunications service revenues, revenues from services sold to end user customers. Using end user revenues (that is, excluding amounts received by one carrier from another) focuses on the correct measure of size and market penetration — what carriers receive from selling their services to consumers. A carrier's retail revenues would, of course, reflect what that carrier paid to another carrier for telecommunications services it resells, so the national fund would receive a contribution as a result of the underlying resold service.

Unfortunately, the Notice goes off in the wrong direction and proposes to allocate costs based on gross telecommunications revenues *minus charges paid to other carriers*.⁷ The Notice does not explain why this change is necessary to make the system competitively neutral, other than to refer to “double counting” of revenues.⁸ In fact, the Commission rejected in 1993 this same double counting argument in connection with recovery of TRS costs when it declined resellers' request that the Commission exclude from their revenues used to allocate TRS costs the

⁶ 47 C.F.R. § 64.604(c)(4)(ii)(A). The Rules deal only with interstate TRS costs, and, therefore, use only gross interstate revenues as the allocator.

⁷ Notice ¶ 213.

⁸ Notice ¶ 213.

The Commission's order last week in *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order ¶¶ 342-43, adopted a cost recovery plan for number administration like the one proposed in the Notice. Although that order also talks about double counting, it does not shed any light on the competitive problem the Commission apparently believes would result.

amount they paid to other carriers for telecommunications services.⁹ Nothing has changed to make the resellers' arguments any more appealing today.

More important, the Commission's proposal would fail the test of competitive neutrality in that it would decrease the contribution made by resellers and increase the burden on their facilities-based competitors. This would be inconsistent with the Commission's own requirement that "a 'competitively neutral' cost recovery mechanism should not give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber."¹⁰ Given the magnitude of the total costs of number portability, several billions of dollars nationwide, the Commission may not relieve resellers of their statutory obligation to pay their fair share.

The competitive disparity of the Commission's proposal is simply illustrated. For example, section 251(b)(4) requires Bell Atlantic to sell end user services to other carriers for them to resell in competition with Bell Atlantic. Section 251(d)(3) prescribes what Bell Atlantic may charge for these services — Bell Atlantic's established end user rate less costs Bell Atlantic actually avoids by selling at wholesale. Under the Commission's proposal, Bell Atlantic would be required to contribute to the costs of number portability based on the total revenues from sales of these wholesale services. However, section 252(d)(3) prevents Bell Atlantic from recovering this cost from its reseller-customer, and it would be forced to seek recovery from its remaining end user customers. The reseller, by contrast, would not contribute on this basis, but only on a

⁹ *In the Matter of Telecommunications Relay Services, and the Americans With Disabilities Act of 1990*, 8 FCC Rcd 5300 ¶ 13 (1993).

¹⁰ Notice ¶132.

fraction of the revenues it receives — only on the “profit” over what it paid Bell Atlantic for the service.

This violates “competitive neutrality” in two ways. First, in head-to-head competition for the same customer, the Commission’s plan would put Bell Atlantic at an appreciable cost disadvantage to the reseller. Second, Bell Atlantic would also be at a cost disadvantage when competing with other carriers for the business of other customers, because it has to recover from those customers the contribution it made on the service it sold to the reseller under section 251(c)(4).¹¹

The Commission proposes to allow carriers exogenous cost treatment for their number portability costs.¹² In theory, this could mitigate this competitive disparity as to access services. There are two problems with this approach, however. First, if interexchange carriers can buy network elements in place of access, exogenous adjustments will not help Bell Atlantic recover portability costs. Second, this approach would be inconsistent with the goal of removing subsidies from access rates and moving those rates closer to the true costs of providing the service.

End user charges. Once the industry’s number portability costs have been spread among all telecommunications carriers, the question becomes whether the Commission should prescribe any rules for these carriers’ recovery of these costs from users of telecommunications

¹¹ The same disparity could result if the carrier bought network elements from Bell Atlantic, as it is not clear that the Commission’s TELRIC methodology would permit Bell Atlantic to recover a portion of its number portability contribution as a cost of providing the network element. It is also far from clear whether the States would permit such recovery under the rules they adopt.

¹² Notice ¶ 230.

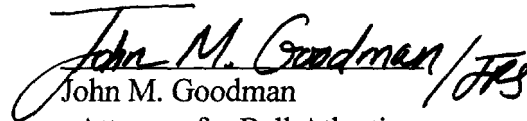
services. In order to be competitively neutral, any cost recovery system must require all carriers to recover (or not recover) their number portability from end users in the same manner. If one competitor passes its costs on to certain customers while another competitor handles them differently, then the system will not be neutral.

Bell Atlantic, therefore, proposes that all telecommunications carriers with subscribed customers — such as local exchange carriers (including competitive access providers), toll carriers with presubscribed customers and CMRS providers — recover their costs through a separately stated charge on these customers' monthly bills. This charge should be set as a proportion of the total telecommunications revenues billed that month, not a flat rate. Carriers which do not have subscribed customers (such as operator service providers in the payphone market) and other carriers to the extent they receive telecommunications revenues from non-subscribers should also be required to recover their costs in proportion to the revenues billed.

Conclusion

The Commission has an opportunity to create a simple, non-regulatory system for apportioning the costs of number portability among all telecommunications carriers as required by the Act. It should take that opportunity. The Commission should not be misled by carriers who want to reduce the amount of their own contributions into excluding from the formula amounts they pay to other carriers. This would result in competitive disparity, not competitive neutrality.

Respectfully submitted,


John M. Goodman
Attorney for Bell Atlantic

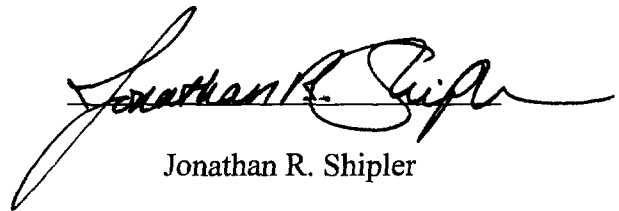
Edward D. Young, III
Of Counsel

1133 20th Street, N.W.
Washington, D.C. 20036
(202) 392-1497

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of August, 1996 a copy of the foregoing
"Comments of Bell Atlantic" was sent by first class mail, postage prepaid, to the parties on
the attached list.



Jonathan R. Shipler

* By Hand

Competitive Pricing Division *
Common Carrier Bureau
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, D.C. 20554

ITS, Inc.*
Room 140
2100 M Street, N.W.
Washington, D.C. 20037

(2 copies)

Wanda M. Harris *
Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, D.C. 20554